

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

No. 22-1875 T
(Senior Judge Marian Blank Horn)

CECIL BELL,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

DEFENDANT'S STATUS REPORT

Pursuant to the Court's Order dated February 15, 2023, defendant submits this status report and states as follows:

1. On February 13, 2023, defendant filed an Unopposed Motion for Extension of Time, requesting until April 24, 2023, to answer or otherwise respond to plaintiff's complaint.
2. The Court granted defendant's Motion on February 15, 2023, and directed defendant to file on or before March 6, 2023, a status report "indicating if the administrative file has been located and provided to defendant's counsel of record and if defendant has received the Chief Counsel's recommendation. If the administrative file has been located, defendant shall explain how the file was misplaced and the steps the agency took to locate the administrative file."
3. Defendant has received two electronically scanned documents for this case and has not yet received Chief Counsel's defense recommendation.

4. Upon receipt of the complaint, defendant's counsel forwarded a copy to the Office of Chief Counsel along with a request to assemble the relevant files and prepare a written recommendation regarding the defense of this case.

5. An attorney from the Office of Chief Counsel was assigned to this case on January 27, 2023.

6. The Chief Counsel attorney immediately sent a request to the IRS litigation support office in Kansas City, Missouri, responsible for locating and assembling the relevant administrative files.

7. Many cases have no singular paper administrative files maintained by the IRS; relevant files must be assembled from various physical and electronic sources that vary depending on the case.

8. There is currently only one refund litigation file clerk employed in the Kansas City Service Center's litigation support office.

9. The file clerk has a backlog of requests to complete and was not able to begin assembling the administrative files for this case until on or about March 1, 2023.

10. That day, he provided scanned copies of two electronically stored records to the Office of Chief Counsel, and the Office of Chief Counsel provided them to defendant's counsel.

11. The clerk also determined the location of possible paper files and sent a request to the IRS Service Center in Ogden, Utah, to retrieve them. This process could take a few weeks.

12. After the paper files are retrieved, they will be sent to the file clerk in Kansas City, who will then forward them to the Office of Chief Counsel for forwarding to defendant's counsel.

13. Most IRS Service Centers are currently also operating at reduced capacity and have a backlog of requests.

14. It appears that this case presents a novel legal issue, which has been identified as an issue of first impression.

15. While awaiting receipt of the file documents, the attorney assigned to this case in the Office of Chief Counsel has consulted Chief Counsel's subject-matter specialists located in the National Office regarding the agency's legal position.

16. Two separate components in the National Office are currently coordinating on the issue. After that process is complete, the official views of the Office of Chief Counsel will be provided to the assigned attorney responsible for preparing and forwarding that office's defense recommendation to defendant's counsel.

Respectfully submitted,

March 6, 2023

/s/ Elizabeth B. Villarreal
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